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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

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## LEGEND

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Former Sub 2 =

Contributed Subs =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

Business A =

Business B =

Business C =

Business D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

l =

m =

n =

o =

p =

q =

r =

s =

t =

u =

v =

Investor A =

Agent =

Corporation A =

Dear :

This letter responds to your June 2, 2006 request for rulings on certain Federal income tax consequences of a proposed transaction described below (the "Proposed Transaction"). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the distribution described below satisfies the business purpose requirement of

§ 1.355-2(b) of the Income Tax Regulations, whether the distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled (as defined below) or both (see § 355(a)(1)(B) of the Internal Revenue Code (the “Code”) and § 1.355-2(d)), or whether the distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7).

### Summary of Facts

Distributing is a publicly traded corporation and the common parent of an affiliated group of companies that files a consolidated Federal income tax return on a calendar-year basis.

Distributing wholly owns the Contributed Subs (some of which engage in Business C), Sub 1, Sub 8 (engaged in Business D), and all of the Class B common shares, representing a percent (more than 80 percent) of the value and b percent (more than 80 percent) of the vote of Controlled. The Controlled Class A common shares, representing c percent (less than 20 percent) of the value and d percent (less than 20 percent) of the vote, were distributed pro rata by Distributing to its shareholders on Date 4 (the “Controlled Stock Distribution”). The Controlled Stock Distribution was treated as taxable to Distributing under § 311(b) and to its shareholders under § 301.

Controlled wholly owns Sub 3. Sub 3 wholly owns Sub 4 and Sub 5. Sub 4 and Sub 5 are collectively referred to as “Group 1.” Sub 4 wholly owns LLC 1, a limited liability company that is disregarded as separate from its owner for Federal tax purposes under § 301.7701-3 (a “disregarded entity”). LLC 1 houses the Controlled group’s employees, including those used by Sub 8, and charges a fee to each Controlled group entity that uses the employees. Before the Distribution (described below), the LLC 1 employees used by Sub 8 will be transferred to LLC 3. Controlled and its subsidiaries conduct Business A.

As of Date 8, Distributing and Group 1 owned e percent (more than 50 percent) and f percent, respectively, of Sub 2. Of Distributing’s interest in Sub 2, g percent represents previously purchased stock (the “Distributing Previously Purchased Stock”). The Group 1’s interest in Sub 2, of f percent, represents previously purchased stock (the “Group 1 Previously Purchased Stock”). The previously purchased stock was acquired to maintain the Distributing group’s controlling interest in Sub 2 for consolidated financial accounting purposes. Distributing’s remaining h percent (more than 50 percent) interest in Sub 2 was acquired in the Sub 2 Merger (described below).

Sub 2 wholly owns LLC 2, a disregarded entity. LLC 2 wholly owns Sub 6, and Sub 6 wholly owns Sub 7. Sub 7 wholly owns LLC 3, a disregarded entity. LLC 3 houses the Sub 2 group’s employees and charges a fee to each Sub 2 entity that uses the employees. Sub 2 and its subsidiary entities conduct Business B.

Former Sub 2 was incorporated by Distributing on Date 1 as a wholly owned subsidiary. On Date 2, a group of investors paid i dollars to Former Sub 2 in exchange for j newly issued shares of Former Sub 2 common stock, representing a k percent equity interest in Former Sub 2 (the “Investor Transaction”). The remaining l percent (more than 60 percent) of Former Sub 2 continued to be owned by Distributing.

On Date 3, Former Sub 2 entered into a definitive merger agreement to combine operations with Corporation A to form a single publicly traded company. On Date 5, Former Sub 2 merged with and into LLC 4, a disregarded entity wholly owned by Corporation A, in exchange for Corporation A common stock (the “Sub 2 Merger”). The Sub 2 Merger was intended to qualify as a tax-free reorganization under § 368(a). After the Sub 2 Merger, LLC 4 changed its name to LLC 2, and Corporation A changed its name to Sub 2. Distributing owned (and continues to own) more than 50 percent of the Sub 2 stock after the Sub 2 Merger.

Before the Proposed Transaction, and pursuant to a pre-existing binding commitment unrelated to the Proposed Transaction, Distributing transferred the stock of Sub 1 to Sub 2 on Date 6.

The financial information submitted by Distributing indicates that Business A (conducted by Controlled) and Business D (conducted by Sub 8) each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing’s management has determined that the market has ascribed a significant holding company discount to Distributing as a result of its complex holding company structure, and that Distributing’s controlling position in Sub 2 and Controlled within this structure exerts downward pressure on the value of the Sub 2 stock and the Controlled stock. Though growth through acquisitions has been and continues to be an important objective of Distributing, Controlled, and Sub 2, the holding company structure has prevented Sub 2 and Controlled from using their stock as acquisition currency. This has also prevented Sub 2 and Controlled from using equity-based compensation in the most efficient manner. The parties have therefore decided to effect the Proposed Transaction to (i) eliminate the holding company structure and thereby increase the trading values of Controlled and Sub 2 and, as a result, (ii) make the Controlled stock and Sub 2 stock available and more attractive as acquisition currency and (iii) enhance each company’s compensation of key employees.

### **Proposed Transaction**

To accomplish these stated business purposes, the parties will undertake the following steps some of which have been completed (the “Proposed Transaction”):

- (i) To limit dilution caused by option exercises:

- a. Sub 2 has repurchased, and plans to repurchase more of its stock to limit dilution caused by option exercises. As of Date 9, Sub 2 had repurchased m shares, including those repurchased from Investor A (described below).
  - b. After Investor A had offered to sell Sub 2 a portion of its Sub 2 shares for what Sub 2 viewed as a favorable price, Sub 2 repurchased n shares from Investor A at o dollars per share on Date 7. On Date 9, Sub 2 repurchased an additional n shares from Investor A at p dollars per share.
  - c. Sub 2 will use secondary Sub 2 shares to settle Sub 2 option exercises. To accomplish this, Sub 2 will transfer cash to Agent. Agent then will purchase Sub 2 stock in the open market and use the purchased shares to settle Sub 2 option exercises (these purchases, together with those described above in steps (i)a and (i)b, the “Repurchases”). Alternatively, Sub 2 may satisfy the option exercises with Sub 2 treasury stock.
- (ii) Sub 2 will purchase the Sub 2 stock held by Group 1 for cash (the “Redemption”).
- (iii) Pending regulatory approval, Controlled will contribute all of its stock and ownership interests in subsidiary entities to a new corporation (“New Holdco”) in exchange for all the stock of New Holdco (the “New Holdco Contribution”).
- (iv) Except for its stock in Sub 2 and Sub 8, Distributing will contribute all of its assets, including the stock and ownership interests in the Contributed Subs, to Controlled in exchange for Controlled Class A common stock and the assumption by Controlled of all Distributing liabilities, except obligations associated with Sub 2, if any (the “Contribution”). Distributing will also transfer its employee stock purchase plan (the “ESPP”) to Controlled (the “ESPP Transfer”).
- (v) All of Distributing’s Controlled Class B common stock will be converted into Controlled Class A common stock (the “Recapitalization”).
- (vi) Distributing will distribute its Controlled Class A common stock to the Distributing shareholders (the “Distribution”). No fractional shares will be issued to the Distributing shareholders. Instead, Agent will aggregate and sell on the open market all fractional shares and transfer the proceeds to those shareholders otherwise entitled to the fractional shares.
- (vii) Approximately q to r business days after the Distribution, Sub 8 will merge into a newly formed subsidiary of Sub 2 (“Sub 9”) in exchange for Sub 2 stock, with Sub 9 surviving (the “Sub 8 Merger”).
- (viii) Approximately s to t business days after the Sub 8 Merger, but in no event later than u business days after the Distribution, Distributing will merge with and into Sub 2,



with Sub 2 surviving (the “Merger”). In the Merger, former Distributing shareholders will receive y percent (more than 50 percent) of the Sub 2 stock. Agent will aggregate and sell on the open market all fractional shares and distribute the proceeds to those shareholders otherwise entitled to the fractional shares.

Sub 2, as successor to Distributing, and Controlled will enter into several agreements for support and transitional services.

In connection with the Proposed Transaction, the Sub 2 board of directors (the “Sub 2 Board”) and the Controlled board of directors (the “Controlled Board”) will reconstitute themselves through a series of director resignations and director appointments in the manner prescribed by existing articles of incorporation and by-laws. Neither the Sub 2 Board nor the Controlled Board will be subject to any restriction or contractual right or obligation that would prevent the board from changing. After the Proposed Transaction is completed, the board members of each company will be chosen in the usual manner at the usual times.

## **Representations**

### **Contribution and Distribution**

Distributing makes the following representations regarding the Contribution and Distribution:

- (a) The Distributing Previously Purchased Stock and the Group 1 Previously Purchased Stock were both acquired for reasons independent of the reasons for the Proposed Transaction (i.e., to maintain the Distributing group’s controlling interest in Sub 2 for consolidated financial accounting purposes).
- (b) The Repurchases have been and will be fair market value for fair market value exchanges.
- (c) The Redemption will be a fair market value for fair market value exchange.
- (d) The Sub 2 Merger qualified as a reorganization under § 368(a).
- (e) The New Holdco Contribution will qualify as a nonrecognition exchange under § 351.
- (f) The Recapitalization will qualify as a reorganization under § 368(a)(1)(E).
- (g) The indebtedness owed by Controlled to Distributing, if any, after the Distribution will not constitute stock or securities.
- (h) Except for the restricted Controlled stock that holders of Distributing restricted stock will receive in the same proportion as other Distributing shareholders

(“Restricted Stock Distribution”), no part of the consideration distributed by Distributing in the Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing. In no event will the Restricted Stock Distribution represent more than 20 percent of the Controlled stock in the Distribution.

- (i) Distributing, Controlled, and Sub 2 (as successor of Distributing) each will elect under § 355(b)(3)(C) to treat all members of its separate affiliated group (“SAG” as defined in § 355(b)(3)(B)) as one corporation in determining whether it meets the requirement of § 355(b)(2)(A) regarding active conduct of a trade or business.
- (j) The five years of financial information submitted on behalf of the businesses conducted by Sub 4 (a member of the Controlled SAG) and by Sub 8 (a member of the Distributing SAG) is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted. Sub 4 and Sub 8 are, and immediately after the Distribution will be, affiliated with Controlled and Distributing, respectively, in a manner that satisfies § 1504(a), without regard to § 1504(b). Immediately after the Sub 8 Merger, Sub 9 will be affiliated with Sub 2 in a manner that satisfies § 1504(a), without regard to § 1504(b).
- (k) Following the Distribution, the Distributing SAG (and then Sub 2, as successor to Distributing) and the Controlled SAG will each continue the active conduct of their respective businesses, independently and with their separate employees.
- (l) The Distribution will be carried out for the following corporate business purposes: (1) to eliminate the holding company structure with its significant holding company discount and thereby increase the trading values of Controlled and Sub 2; (2) to make the stock of Controlled and the stock of Sub 2 available and more attractive as acquisition currency; and (3) to enhance each company’s compensation structure in order to attract, motivate, and retain key employees. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (m) The Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (n) The total adjusted basis and the fair market value of the assets transferred to Controlled in the Contribution each will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of § 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.

- (o) The liabilities to be assumed (as determined under § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (p) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.
- (q) The aggregate fair market value of the assets of Distributing transferred in the Contribution will equal or exceed the aggregate adjusted basis of these assets.
- (r) No intercorporate debt will exist between Distributing (or its successor, Sub 2, or any subsidiary of Sub 2) and Controlled (or any subsidiary of Controlled) at the time of, or after, the Distribution.
- (s) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Any excess loss account of a member of the Controlled group in the stock of another member that is required to be taken into account by § 1.1502-19 will be included in income immediately before the Distribution. Further, at the time of the Distribution, Distributing will not have an excess loss account in the stock of Controlled.
- (t) Payments made in connection with all continuing transactions, if any, between Distributing (or its successor, Sub 2) or any member of the Distributing or Sub 2 group and Controlled or any member of the Controlled group will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (u) No two parties to the Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (v) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes

of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

- (w) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (x) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (y) The receipt by Distributing shareholders of cash in lieu of fractional shares of Controlled Class A common stock resulting from the open market sale of the fractional shares has been arranged solely for the purpose of avoiding the expense and inconvenience to Distributing of issuing fractional shares and does not represent separately bargained-for consideration. It is intended that the total cash consideration to be received by the shareholders of Distributing on account of the open market sale of their fractional shares will not exceed one percent of the total consideration that will be distributed in the Distribution. It is intended that no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled Class A common stock. Controlled is not aware of any overall plan (within the meaning of § 355(e)) to acquire an ownership interest in Controlled through the purchase of the bundled Controlled shares sold in connection with the issuance of cash in lieu of fractional shares.

#### The Sub 8 Merger

Distributing makes the following representations regarding the Sub 8 Merger:

- (z) The Sub 8 Merger will be effected pursuant to the statute or statutes necessary to effect the merger or consolidation, in which, as a result of the operation of such laws, simultaneously, (i) all of the assets (other than those distributed in the transaction) and liabilities (except to the extent satisfied or discharged in the transaction or are nonrecourse liabilities to which assets distributed in the

transaction are subject) of Sub 8 will become the assets and liabilities of Sub 9 and (ii) Sub 8 will cease its separate legal existence for all purposes. Sub 8 and Sub 9 each is properly classified as a corporation for U.S. Federal income tax purposes in accordance with §§ 301.7701-1 through 301.7701-4.

- (aa) The fair market value of the Sub 2 stock and other consideration received by Distributing will be approximately equal to the fair market value of the Sub 8 stock surrendered in the Sub 8 Merger.
- (bb) There is no plan or intention by Sub 2 (or any related person, as defined in § 1.368-1(e)(3)) to acquire, for consideration other than Sub 2 stock, an amount of the Sub 2 stock issued or deemed issued in the Sub 8 Merger, that would reduce Distributing's ownership of Sub 2 stock to a number of shares having a value, as of the date of the Sub 8 Merger, of less than 40 percent of the value of all the formerly outstanding stock of Sub 8 as of the same date. For purposes of this representation, cash or other property furnished by Sub 2 directly or indirectly for redemptions of Sub 8 stock (including Sub 8 stock surrendered by dissenters or exchanged for cash in lieu of fractional shares) or distributions by Sub 8 to its shareholders in connection with the Sub 8 Merger must be taken into account in determining the value of all of the formerly outstanding stock of Sub 8.
- (cc) Sub 9 will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Sub 8 immediately prior to the Sub 8 Merger. For purposes of the representation, amounts paid by Sub 9 to dissenters, amounts paid by Sub 9 to shareholders who receive cash or other property, Sub 9 assets used to pay reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Sub 9 immediately before the Sub 8 Merger, will be included as assets of Sub 9 immediately before the Sub 8 Merger.
- (dd) Immediately before the Sub 8 Merger, Sub 2 will be in control of Sub 9 within the meaning of § 368(c).
- (ee) Following the Sub 8 Merger, Sub 9 does not intend to issue additional shares of its stock that would result in Sub 2 losing control of Sub 9 within the meaning of § 368(c).
- (ff) Sub 2 has no plan or intention to liquidate Sub 9; to merge Sub 9 with and into another corporation; to sell or otherwise dispose of the stock of Sub 9; or to cause Sub 9 to sell or otherwise dispose of any of the assets of Sub 8 acquired in the Sub 8 Merger, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or § 1.368-2(k).

- (gg) The liabilities of Sub 8 assumed (as determined under § 357(d)), if any, by Sub 9 were incurred by Sub 8 in the ordinary course of its business.
- (hh) Following the Sub 8 Merger, Sub 9 intends to continue the historic business of Sub 8 or use a significant portion of Sub 8's historic business assets in a business.
- (ii) Sub 2, Sub 9, Sub 8, and Distributing will pay their respective expenses, if any, incurred in connection with the Sub 8 Merger.
- (jj) There is no intercorporate indebtedness existing between Sub 2 and Sub 8 or between Sub 9 and Sub 8 that was issued, acquired, or will be settled at a discount.
- (kk) No two parties to the Sub 8 Merger are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (ll) Sub 8 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (mm) No stock of Sub 9 will be issued in the Sub 8 Merger.
- (nn) The fair market value of the assets of Sub 8 transferred to Sub 9 will exceed the sum of (i) the amount of liabilities of Sub 8 assumed (as determined under § 357(d)) by Sub 9 in connection with the exchange, (ii) the amount of liabilities owed to Sub 9 by Sub 8 that are discharged or extinguished in connection with the exchange, and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under § 361(a) without the recognition of gain) received by Sub 8 in connection with the exchange. The fair market value of the assets of Sub 9 will exceed the amount of its liabilities immediately after the exchange.

### Merger

Distributing makes the following representations regarding the Merger:

- (oo) The Merger will be effected pursuant to the statute or statutes necessary to effect the merger or consolidation, in which, as a result of the operation of such laws, simultaneously, (i) all of the assets (other than those distributed in the transaction) and liabilities (except to the extent satisfied or discharged in the transaction or are nonrecourse liabilities to which assets distributed in the transaction are subject) of Distributing will become the assets and liabilities of Sub 2, and (ii) Distributing will cease its separate legal existence for all purposes. Distributing and Sub 2 each is properly classified as a corporation

for U.S. Federal income tax purposes in accordance with §§ 301.7701-1 through 301.7701-4.

- (pp) The fair market value of the Sub 2 stock and other consideration received by each Distributing shareholder will be approximately equal to the fair market value of the Distributing stock surrendered in the Merger.
- (qq) Except for acquisitions that may occur pursuant to the general repurchase program of Sub 2, there is no plan or intention by Sub 2 (or any related person, as defined in § 1.368-1(e)(3)) to acquire, for consideration other than Sub 2 stock, an amount of the Sub 2 stock issued or deemed issued in connection with the Merger that would reduce the Distributing shareholders' ownership of Sub 2 stock to a number of shares having a value, as of the date of the Merger, of less than 40 percent of the value of all the formerly outstanding stock of Distributing as of the same date. For purposes of this representation, cash or other property furnished by Sub 2 directly or indirectly for redemptions of Distributing stock (including Distributing stock surrendered by dissenters or exchanged for cash in lieu of fractional shares) or distributions by Distributing to its shareholders in connection with the Merger must be taken into account in determining the value of all of the formerly outstanding stock of Distributing.
- (rr) Sub 2 has no plan or intention to sell or otherwise dispose of any of the assets of Distributing acquired in the Merger, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or § 1.368-2(k).
- (ss) The liabilities of Distributing assumed (as determined under § 357(d)), if any, by Sub 2 were incurred by Distributing in the ordinary course of its business.
- (tt) Following the Merger, Sub 2 intends to continue the historic business of Distributing or use a significant portion of Distributing's historic business assets in a business.
- (uu) Sub 2, Distributing, and the shareholders of Distributing will pay their respective expenses, if any, incurred in connection with the Merger.
- (vv) There is no intercorporate indebtedness existing between Distributing and Sub 2 that was issued, acquired, or will be settled at a discount.
- (ww) No two parties to the Merger are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (xx) Distributing is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

- (yy) The fair market value of the assets of Distributing transferred to Sub 2 will exceed the sum of (i) the amount of liabilities of Distributing assumed (as determined under § 357(d)) by Sub 2 in connection with the exchange, (ii) the amount of liabilities owed to Sub 2 by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Sub 2 will exceed the amount of its liabilities immediately after the exchange.
- (zz) The receipt by the Distributing shareholders of cash in lieu of fractional shares of Sub 2 common stock resulting from the open market sale of the fractional shares has been arranged solely for the purpose of avoiding the expense and inconvenience to Sub 2 of issuing fractional shares and does not represent separately bargained-for consideration. It is intended that the total cash consideration to be received by the shareholders of Distributing on account of the open market sale of their fractional shares will not exceed one percent of the total consideration that will be distributed in the Merger. It is intended that no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Sub 2 common stock. Sub 2 is not aware of any overall plan (within the meaning of § 355(e)) to acquire an ownership interest in Sub 2 through the purchase of the bundled Sub 2 shares sold in connection with the issuance of cash in lieu of fractional shares.

### **Rulings**

Based solely on the information submitted and the representations set forth above, we rule as follows on the Contribution and Distribution:

- (1) The Contribution, followed by the Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be “a party to the reorganization” under § 368(b).
- (2) No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).
- (3) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).
- (4) The basis of each asset, including each stock and ownership interest in the Contributed Subs, received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).



- (5) The holding period of each asset, including each stock and ownership interest in the Contributed Subs, received by Controlled in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).
- (6) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)(1)).
- (7) No gain or loss will be recognized by any shareholder of Distributing on the Distribution (§ 355(a)(1)).
- (8) The aggregate basis of the Distributing stock and the Controlled stock in the hands of each shareholder of Distributing (including any fractional shares interest in Controlled to which the shareholder may be entitled) will equal the aggregate basis of the Distributing stock held by the shareholder immediately before the Distribution, allocated between the stock of Distributing and Controlled in proportion to the fair market value of each immediately following the Distribution in accordance with § 1.358-1(a) (§ 358(b) and (c)).
- (9) The holding period of the Controlled stock received by each shareholder of Distributing in the Distribution (including any fractional share interest in Controlled to which the shareholder may be entitled) will include the holding period of the Distributing stock on which the Distribution is made, provided the Distributing stock was held as a capital asset on the date of the Distribution (§ 1223(1)).
- (10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).
- (11) The receipt by Distributing shareholders of cash in lieu of fractional shares of Controlled Class A common stock will be treated for Federal income tax purposes as if the fractional shares had been distributed to the Distributing shareholders as part of the Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss), if any (determined using the basis allocated to the fractional shares in ruling (8) and the holding period given the fractional shares in ruling (9)), will be treated as a capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder (§ 1001).
- (12) Following the Distribution, Controlled will not be a successor of Distributing for purposes of § 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are “includible corporations” (under § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated Federal income tax return with Controlled as the common parent.
- (13) For purposes of computing a potential ownership change under § 355(e), the Distributing shareholders will be treated as owning 100 percent of the outstanding stock of Controlled immediately after the Distribution, notwithstanding that c

percent of the Controlled stock was distributed to the Distributing shareholders in the Controlled Stock Distribution.

- (14) The initial designation of the members of the Controlled Board, the initial designation of the members of the Sub 2 Board, cash received for fractional shares in the Distribution, cash received for fractional shares in the Merger, and the change in sponsorship from Distributing to Controlled as part of the ESPP Transfer will not be taken into account in the § 355(e) analysis.

Based solely on the information submitted and the representations set forth above, we rule as follows on the Sub 8 Merger:

- (15) Provided the Sub 8 Merger qualifies as a statutory merger under applicable law, the Sub 8 Merger will be a reorganization under § 368(a)(1)(A) by reason of § 368(a)(2)(D). Sub 8, Sub 2, and Sub 9 will each be "a party to a reorganization" within the meaning of § 368(b).
- (16) No gain or loss will be recognized by Sub 8 on its transfer of substantially all of its assets to Sub 9 in exchange for Sub 2 stock and the assumption by Sub 9 of the Sub 8 liabilities (§§ 361(a) and 357(a)).
- (17) No gain or loss will be recognized by either Sub 2 or Sub 9 on the acquisition by Sub 9 of substantially all of the assets of Sub 8 in exchange for Sub 2 stock and the assumption by Sub 9 of the Sub 8 liabilities (§ 1.1032-2).
- (18) The basis of each Sub 8 asset received by Sub 9 in the Sub 8 Merger will equal the basis of that asset in the hands of Sub 8 immediately before the Sub 8 Merger (§ 362(b)).
- (19) The holding period of each Sub 8 asset received by Sub 9 in the Sub 8 Merger will include the period during which Sub 8 held the asset (§ 1223(2)).
- (20) No gain or loss will be recognized by Sub 8 on its distribution of Sub 2 stock to Distributing pursuant to the plan of reorganization (§ 361(c)(1)).
- (21) No gain or loss will be recognized by Distributing on its receipt of Sub 2 stock in exchange for its Sub 8 stock (§ 354(a)(1)).
- (22) The aggregate basis of Sub 2 stock received by Distributing in the Sub 8 Merger will equal the aggregate basis of the Sub 8 stock surrendered by Distributing in exchange therefor, allocated in accordance with § 1.358-2(a)(2) (§§ 358(a)(1) and (b)).
- (23) The holding period of the Sub 2 stock received by Distributing in the Sub 8 Merger will include the holding period of the Sub 8 stock surrendered by Distributing in the

Sub 8 Merger, provided the Sub 8 stock was held as a capital asset on the date of the Sub 8 Merger (§ 1223(1)).

- (24) The basis of the Sub 9 stock in the hands of Sub 2 will be determined under §§ 1.358-6(c)(1) and 1.1502-30.
- (25) Pursuant to § 381(a) and § 1.381(a)-1, Sub 9 will succeed to and take into account the items of Sub 8 described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, 384, and the regulations thereunder.

Based solely on the information submitted and the representations set forth above, we rule as follows on the Merger:

- (26) Provided the Merger qualifies as a statutory merger under applicable law, the Merger will be a reorganization under § 368(a)(1)(A). Distributing and Sub 2 will each be “a party to a reorganization” within the meaning of § 368(b).
- (27) No gain or loss will be recognized by Distributing on the transfer of its assets to Sub 2 in exchange for Sub 2 stock (§ 361(a)).
- (28) No gain or loss will be recognized by Sub 2 on its receipt of the Distributing assets in exchange for Sub 2 stock (§ 1032).
- (29) No gain or loss will be recognized by any Distributing shareholder on the receipt of Sub 2 stock in the Merger (§ 354(a)).
- (30) The receipt by Distributing shareholders of cash in lieu of fractional shares of Sub 2 stock will be treated for Federal income tax purposes as if the fractional shares had been distributed to the Distributing shareholders as part of the Merger and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss), if any, (determined using the basis allocated to the fractional shares in ruling (33) and the holding period given the fractional shares in ruling (34)), will be treated as a capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder (§ 1001).
- (31) The basis of each Distributing asset received by Sub 2 in the Merger will equal the basis of that asset in the hands of Distributing immediately before the Merger (§ 362(b)).
- (32) The holding period of each Distributing asset received by Sub 2 in the Merger will include the period during which Distributing held the asset (§ 1223(2)).
- (33) The aggregate basis of the Sub 2 stock received by each Distributing shareholder (including any fractional share interest in Sub 2 to which the shareholder may be entitled) in the Merger will equal the aggregate basis of the Distributing stock

surrendered by the shareholder in exchange therefor, allocated in accordance with § 1.358-2(a)(2) (§ 358(a)(1) and (b)).

- (34) The holding period of the Sub 2 stock received by each shareholder of Distributing (including any fractional share interest in Sub 2 to which the shareholder may be entitled) will include the holding period of the Distributing stock surrendered by the shareholder in the Merger, provided the Distributing stock surrendered was held as a capital asset on the date of the Merger (§ 1223(1)).
- (35) Sub 2 will be the successor of Distributing under § 355(e)(4)(D).
- (36) In computing a potential ownership change of Distributing under § 355(e), the percentage of Sub 2 stock owned by former Distributing shareholders will be based on the number of Sub 2 shares received in the Merger and will not be reduced by (i) the Repurchases occurring prior to the Merger, (ii) the Redemption occurring prior to the Merger, or (iii) the Sub 2 stock received in the Sub 8 Merger.
- (37) In applying § 355(e)(3)(A)(iv), the methodology of the example in the legislative history to § 355(e)(3)(A)(iv) is applicable to the Merger for purposes of testing the Distribution under § 355(e) and applies separately with respect to each of the vote test and the value test of that provision (see S. Rep. No 105-174, at 174-175 (1998); see *also* H.R. Conf. Rep. No 105-220, at 532-33 (1997)).

### **Caveats**

No opinion is expressed about the tax treatment of the transactions under other provisions of the Code or regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether any distribution described above satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether any distribution described above is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both;
- (iii) Whether any distribution described above and an acquisition or acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii), including Distributing's acquisition of the Previously Purchased Stock of Sub 2; and
- (iv) The Federal income tax consequences (other than those addressed above) of the Repurchases, the Redemption, the New Holdco Contribution, the ESPP Transfer, the Recapitalization, and the Sub 2 Merger.

**Procedural Matters**

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the Federal income tax return of each party involved in the Proposed Transaction for the taxable year in which the Proposed Transaction are completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely yours,

By: \_\_\_\_\_  
Richard K. Passales  
Senior Counsel, Branch 4,  
Office of Associate Chief Counsel (Corporate)